

Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 1

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----x  
In Re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) CIVIL ACTION NO.  
01-CV-12257-PBS  
-----)  
THIS DOCUMENT RELATES TO )  
ALL ACTIONS )

-----x

39(b)(6) DEPOSITION OF ROBERT A. SPURR

New York, New York

Thursday, August 12, 2004

9:43 a.m.

30(b)(6) deposition of Ortho-McNeil  
Pharmaceutical, by ROBERT A. SPURR, held at  
the offices of Patterson, Belknap, Webb &  
Tyler LLP, 1133 Avenue of the Americas, New  
York, New York, pursuant to Notice, before  
Frank J. Bas, a Registered Professional  
Reporter and Notary Public of the State of  
New York.

A P P E A R A N C E S:

SPECTOR, ROSEMAN & KODROFF, P.C.

Attorneys for Plaintiffs

1818 Market Street, Suite 2500

Philadelphia, Pennsylvania 19103

BY: JOHN A. MACORETTA, ESQ.

JENNIFER L. ENCK, ESQ.

(Appearing Telephonically)

HOGAN & HARTSON LLP

Attorneys for Amgen Inc.

111 South Calvert Street

Suite 1600

Baltimore, Maryland 21202

BY: JANE ANN R. NEISWENDER, ESQ.

A P P E A R A N C E S (CONT'D):

PATTERSON, BELKNAP, WEBB & TYLER LLP  
Attorneys for Johnson & Johnson;  
Centocor Inc.; Ortho Biotech Products, L.P.

1133 Avenue of the Americas  
New York, New York 10036-6710

BY: ANDREW SCHAU, ESQ.  
ESTELLA J. SCHOEN, ESQ.

Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 4

## 1 I N D E X

2 WITNESS PAGE

3 ROBERT A. SPURR

4 By Mr. Macoretta 11

5 By Mr. Schau 368

6

7 DIRECTIONS: PAGE 99

8 RULINGS: (None)

9 MOTIONS: (None)

## 10 R E Q U E S T S

11 PAGE 21 Structure of McNeil Specialty

12 Pharmaceuticals

13

## 14 E X H I B I T S

15

16 Exhibit Spurr 001, amended notice of

17 Rule 30(b)(6) deposition.....11

18

19 Exhibit Spurr 002, drug list, headed

20 Purchases Made By Plaintiffs Of Drugs

21 Manufactured/Distributed By The

22 Johnson &amp; Johnson Group.....11

## E X H I B I T S ( C O N T . )

Exhibit Spurr 003, document Bates-numbered

MDL-OMP 0004741, New Product Pricing

Approval Process..... 66

Exhibit Spurr 004, document Bates-numbered

MDL-OMP000032, 2001 Levaquina Pricing Policy

Templates - MCO-0PBM..... 123

Exhibit Spurr 005, document Bates-numbered

MDL-OMP 0002198, page from computer program.. 155

Exhibit Spurr 006, document Bates-numbered

MDL-OMP0002035 through 0002037, headed

Customer Proposal Approval Form ..... 163

Exhibit Spurr 007, document Bates-numbered

MDL-OMP0003948 through MDL-OMP0003952,

headed Projected Financial Impact ..... 183

Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 6

## 1                   E X H I B I T S (C O N T.)

2   Exhibit Spurr 008, document Bates-numbered

3                   MDL-OMP0006466, headed Approval Process

4                   for PBM/MCO Contracts for Targeted Accounts

5                   Within Pricing Policy..... 186

6   Exhibit Spurr 009, document Bates-numbered

7                   MDL-OMP0004702 through 4707, interoffice

8                   memorandum from Kenya Purnell dated

9                   January 26, 1999, Subject: Market Pricing

10                  Update ..... 227

11

12   Exhibit Spurr 010, document Bates-numbered

13                  MDL-OMP 0005157, e-mail..... 273

14

15   Exhibit Spurr 011, document Bates-numbered

16                  MDL-OMP 0004511, headed Ortho-McNeil

17                  Pharmaceutical Anti-infective Franchise,

18                  Levaquin, Proposal Summary..... 275

19

20   Exhibit Spurr 012, document Bates-numbered

21                  MDL-OMP 0001382 through 1387, headed GOPS

22                  to Net Trade Sales Analysis, Year End 2001... 277

## E X H I B I T S ( C O N T . )

Exhibit Spurr 013, document Bates-numbered

MDL-OMP0006088 through 0006166, 2003

Levaquin Brand Plan, July 23, 2002..... 281

Exhibit Spurr 014, document Bates-numbered

MDL-OMP0000287, interoffice memorandum from

Johnson & Johnson dated August 27, 2001 re

Johnson & Johnson/Notice of Program

Participation..... 308

Exhibit Spurr 015, document Bates-numbered

MDL-OMP0000225, e-mail..... 319

Exhibit Spurr 016, document Bates-numbered

MDL-OMP0004064 through 4081, Levaquin

Proposal to Merck-Medco..... 326

Exhibit Spurr 017, document Bates-numbered

MDL-OMP 0006555 through 6587, headed

Levaquin Managed Care Playbook..... 330

## E X H I B I T S ( C O N T . )

Exhibit Spurr 018, document Bates-numbered

MDL-OMP0002961 through 2965, headed Medicare  
Task Force, Johnson and Johnson Domestic  
Pharm Group Fact Sheet..... 335

Exhibit Spurr 019, document Bates-numbered

MDL-OMP0003366 through 3369, headed  
Ortho-McNeil Pharmaceutical Direct Account  
Distributor Prices, Price List Effective  
9/15/99, 5:00 p.m. Eastern Time..... 339

Exhibit Spurr 020, document Bates-numbered

MDL-OMP0002257 through 2258, headed Levaquin  
Value of Formulary Position 3Q 2001..... 341

Exhibit Spurr 021, document Bates-numbered

MDL-OMP0000108, headed Agenda Pricing  
Strategy Meeting January 28, 2002..... 349



Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 9

## E X H I B I T S ( C O N T . )

Exhibit Spurr 022, document Bates-numbered

MDL-OMP0002982 through 2985, headed

Ortho-McNeil Management Board Quarterly

Strategy Meeting March 1-3, 2000, Bernards

Inn Agenda..... 351

Exhibit Spurr 023, document Bates-numbered

MDL-OMP0000194 and 193, two-page document.... 352

Exhibit Spurr 024, document Bates-numbered

MDL-OMP0004113 through 4123, headed

Johnson &amp; Johnson Health Care Systems, Inc.,

Merck-Medco Contract Negotiations,

Contracting Approach August 2001..... 354

Exhibit Spurr 025, document Bates-numbered

MDL-OMP 0001244 through 1255, headed

Levaquin Contracting..... 358

Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 10

E X H I B I T S ( C O N T . )

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

Exhibit Spurr 026, document Bates-numbered  
MDL-OMP0006593 through 6602, interoffice  
memorandum from Dale Russell to Barbara  
Somma dated June 21, 2002..... 360

Exhibit Spurr 027, document Bates-numbered  
MDL-OMP0006741 through 746, headed Managed  
Care Group..... 365

Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 11

1 (Time noted: 9:43 a.m.)

2 (Exhibit Spurr 001 for identification,  
3 amended notice of Rule 30(b)(6) deposition.)

4 (Exhibit Spurr 002 for identification,  
5 drug list, headed Purchases Made By  
6 Plaintiffs Of Drugs Manufactured/Distributed  
7 By The Johnson & Johnson Group.)

8 R O B E R T A. S P U R R,  
9 stating his home address as 10 Horton Drive,  
10 Chester, New Jersey, having been duly sworn  
11 by the Notary Public (Frank J. Bas), was  
12 examined and testified as follows:

13 EXAMINATION BY

14 MR. MACORETTA:

15 Q. Mr. Spurr, good morning.

16 A. Good morning.

17 Q. We met a minute ago, I'm John  
18 Macoretta, I'm here on behalf of the plaintiffs.  
19 Could you start by -- well, where do you work  
20 now? Give me your office and address.

21 MR. SCHAU: John, let me just  
22 interrupt.

1 MR. MACORETTA: Sure.

2 MR. SCHAU: I'll just say at the  
3 outset I would like to designate it for the  
4 moment, the transcript, to be highly  
5 confidential pursuant to the protective  
6 order.

7 MR. MACORETTA: We have no objection  
8 to that.

9 MR. SCHAU: Okay.

10 Q. Go ahead. Where is your office?

11 A. Raritan, New Jersey.

12 Q. What's your home address?

13 A. 10 Horton Drive, Chester, New Jersey.

14 Q. Before we get into the details, into  
15 the substance of questions, let me ask you first,  
16 have you ever been deposed before?

17 A. Yes.

18 Q. Okay. So you're familiar with the  
19 process? I'm going to ask the questions, you're  
20 going to answer them, the court reporter is going  
21 to take down everything we say, right?

22 A. Yes.

1 committee to wherever it goes in J&J corporate?

2 A. Ortho-McNeil finance department,  
3 under Joe Bondi's guidance, would take that to  
4 Christine Poon and to the other financial people  
5 in corporate to review.

6 Q. Okay. Is there some policy that  
7 tells us this is how price -- we're talking about  
8 an initial price, right?

9 A. Initial price, in this case for a  
10 line extension, or a new SKU.

11 Q. Or a new product as well, right?

12 A. Yes. But the new product is a bit  
13 different.

14 Q. How is it different?

15 A. There's another company within J&J  
16 called PGSM. They do our global pricing research  
17 and analysis. So prior to a brand being  
18 commercialized in the U.S., they also put  
19 together market research and pricing  
20 recommendations before transferring it to the  
21 U.S. commercial team that's ultimately going to  
22 market and sell the product here in the U.S.

1 Q. The U.S. commercial team means OMP or  
2 an operating company?

3 A. Another operating. Wherever they  
4 assign the product.

5 Q. Okay. And does this same process,  
6 meaning cross-functional team to OMP pricing  
7 committee to J&J corporate, does that apply to  
8 price changes as well?

9 A. Yes.

10 Q. Is there some policy at OMP that  
11 would say this is the way things work or the way  
12 they flow?

13 A. No.

14 Q. That's just the way you do things?

15 A. That's the way it's been done.

16 Q. The cross-functional team, do they  
17 generate some kind of standard report or  
18 explanation for why they're going to take this  
19 price action?

20 A. Yes, there would usually be a  
21 presentation that would be presented to the  
22 pricing committee.

1 Q. Does that have some name at OMP?

2 A. It would be different for every  
3 brand.

4 Q. For every brand, okay. But it's not  
5 like, you know, this is our price report  
6 explanation form or something like that?

7 A. No.

8 Q. Okay. So there would be a pricing to  
9 the presentation -- a presentation to the pricing  
10 committee, right?

11 A. Yes.

12 Q. Okay. And have you seen the  
13 paperwork, at least for this Levaquin price  
14 setting, that went from OMP to J&J corporate?

15 A. No.

16 Q. But you presume that there's some  
17 presentation or document?

18 A. I honestly don't know what goes  
19 there, but I do not believe it's an actual  
20 presentation.

21 Q. Just some written documentation or  
22 memo or something?

1 A. Yes.

2 Q. Let me show you what we're going to  
3 mark as No. 3.

4 (Exhibit Spurr 003 for identification,  
5 document Bates-numbered MDL-OMP 0004741, New  
6 Product Pricing Approval Process.)

7 Q. You talked about the PGSM, which is  
8 referenced on here, although there's also  
9 something called the GPPC. I'm just trying to  
10 understand the process here. Let me start out,  
11 what's the GPPC?

12 A. It's the global pharmaceutical  
13 pricing committee.

14 Q. Okay. And what's the PGSM?

15 A. I believe it's pharmaceutical  
16 group -- I don't recall exactly what it stands  
17 for.

18 Q. Okay. So does the GPPC need to  
19 approve price changes to existing products?

20 A. In the context of what I know about  
21 the U.S. -- this is a global pricing report. But  
22 in the context of the U.S., I think the answer to



1 that question for new products is yes. For  
2 in-line brands it's no. Pricing changes.

3 Q. So the new 750 milligram version of  
4 Levaquin, did that have to be approved by the  
5 GPPC?

6 A. No.

7 Q. Who are these people -- I want to  
8 talk with you about the GPPC members. Christine  
9 Poon, I don't know if you said her title.

10 A. Yeah, I don't know that I have her  
11 title right, but I believe she's worldwide head  
12 of pharmaceuticals for Johnson & Johnson.

13 Q. David Norton?

14 A. David Norton today in his assignment  
15 is -- he just changed jobs.

16 Q. What did he used to be?

17 A. He was group operating chairman for  
18 U.S. pharmaceuticals.

19 Q. Joe Scodari, Mr. Scodari?

20 A. He's group operating chairman for  
21 another group of J&J companies, that I'm not sure  
22 which ones are assigned to him.

1 Q. Dave Holveck?

2 A. I don't know Dave. Don't know Carol.  
3 Don't know Rose.

4 Q. Dave Sheffield?

5 A. Dave Sheffield is a corporate finance  
6 person. I don't know his title.

7 Q. Zito Sartarelli?

8 A. I don't know Zito.

9 Q. Did any of these people ever work for  
10 OMP?

11 A. I don't know.

12 Q. Some of the other acronyms on this  
13 page, it says -- well, first of all, the top box  
14 says Health Economics. Is that some department  
15 or unit?

16 A. It's a department within PGSM.

17 Q. And there is PGSM, GCT. What's a  
18 GCT?

19 A. I don't know.

20 Q. Further down it talks about GOC.

21 A. Group operating chairman.

22 Q. And below that, communicates results

1 to LOCs?

2 A. Local operating companies.

3 Q. Is OMP a local operating company?

4 A. Yes.

5 Q. Okay. And it's part of several  
6 different groups, right?

7 A. Are you asking that question in the  
8 context of the previous one about the changes in  
9 structure?

10 Q. I'm just trying -- before the most  
11 recent change, what group was OMP a part of? Let  
12 me try it that way.

13 A. I apologize. I still don't  
14 understand. Group of...?

15 Q. A GOC is a group operating company?

16 A. Yes. The company's broken up -- they  
17 take all of these operating companies and they  
18 group them into these group operations.

19 Q. Okay. What group was OMP in before  
20 the most recent change?

21 A. It was in David Norton's group.

22 Q. And what was that called?

1 director of institutional account management? So  
2 has NAMs and NADs that cover long-term care and  
3 GPO, and government, Medicare and Medicaid.

4 Q. Okay.

5 A. Charlie Glass -- oh, this is '99,  
6 that's why I know these people. Charlie Glass I  
7 know as -- he's a business director in the  
8 southeast right now, but worked in-house back in  
9 1999.

10 Q. In-house, meaning at headquarters?

11 A. He worked in a job in what was the  
12 national accounts group back then. The exact job  
13 description I don't recall. And the only reason  
14 I know that is I interviewed Charlie for a job  
15 and he spoke to me that he had worked with my  
16 predecessor on some project with national  
17 accounts.

18 Q. By the way, who was your predecessor?

19 A. Dale Russell.

20 Q. Keep going.

21 A. Robert or Bob Inserra. Bob Inserra  
22 worked in managed health care finance, with

1 Tim -- Kim Timko, T-i-m-k-o. And now Robert  
2 works for HCS in a Medicaid position.

3 Sarah Kennedy is a field sales  
4 director in primary care. She oversees a field  
5 force in primary care. At this time I believe  
6 that she was a director of national accounts in  
7 the national accounts group.

8 I don't know K. Richter.

9 Dale Russell was my predecessor.

10 I don't know J. Strahan.

11 Kim Timko we spoke about. She works  
12 in managed health care finance.

13 And I don't know the last two, Weidle  
14 and Vitari.

15 Q. Okay. I'm going to go back to the  
16 deposition notice and talk about No. 7.  
17 Documents describing the method by which you  
18 calculate or determine the average sales price,  
19 including any determination or rendering of  
20 actual transaction costs and/or revenues at any  
21 level of distribution or processing chains.

22 We talked about already that average

1 sales price is not a term you use except for a  
2 couple of drugs in the Medicare context, right?

3 A. Yes.

4 Q. But you do have a calculation of  
5 gross-to-net, right?

6 A. Yes.

7 Q. Is there some document that tells us  
8 what's included or not included in that  
9 calculation, or some policy?

10 A. There's no policy. There would be  
11 documents, either part of the brand plan or part  
12 of a finance document, that Steve Barrihtaris may  
13 have, or a gentleman by the name of Tim Hillman,  
14 who works with Steve, who is our marketing  
15 controller, that would show everything that goes  
16 into that calculation of gross-to-net.

17 Q. Is that gross-to-net calculation a  
18 J&J-wide calculation? Meaning do the other  
19 operating companies use the same formula or  
20 calculation?

21 A. I don't know.

22 Q. The documents talking about the

1 determining actual transition costs at any level  
2 of the distribution or processing chain. And the  
3 only level I'm interested in here is the PBM  
4 level, I guess. Because you have no  
5 direct-to-physician level, right?

6 A. No.

7 Q. Okay. And I think you talked earlier  
8 that there's no regular report that talks about  
9 that gross-to-net calculation just for PBMs,  
10 right?

11 A. No.

12 Q. Okay. Although we might be able to  
13 find that in the business plan somewhere?

14 A. You may.

15 Q. And on your dashboard report?

16 A. Probably on my dashboard report.

17 Q. But if I wanted to do it, I would --  
18 is there a calculation by customer that exists  
19 somewhere that I could then add up?

20 A. You're looking for the gross-to-net  
21 calculation and trying to do that by customer?

22 Q. Well, I'm trying to do the

Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 233

1 gross-to-net calculation for your PBM business.

2 And I'm trying to --

3 A. It doesn't exist in a report.

4 Someone would have to do that for you.

5 Q. But it could be done by going to all  
6 of the PBM customers, correct?

7 A. Yes.

8 Q. Do you know of another easier way to  
9 do it?

10 A. No. I wish I did. Unfortunately I  
11 don't.

12 Q. Other than for the entire drug  
13 gross-to-net, is it broken down -- any other  
14 groups of gross-to-net? Do you understand what  
15 I'm asking?

16 A. So besides the drug, the category as  
17 well?

18 Q. Or anything else. There's a  
19 calculation of gross-to-net for -- by drug,  
20 right?

21 A. Yes.

22 Q. Okay. Is there a subgroup of that



Robert A. Spurr

Highly Confidential  
New York, NY

August 12, 2004

Page 234

1 drug -- of that calculation, meaning by drug, in  
2 some distribution channel or some other  
3 breakdown?

4 A. No. Only for some products, they  
5 might break it down based on IV or oral, or drugs  
6 not on the list. There might be another reason  
7 to break it down.

8 Q. No. 8 talks about documents which  
9 would report, review, comment or analyze the  
10 profit from any of your drugs. We saw somewhere  
11 on here gross margin, I think.

12 A. Right. That was in those contract  
13 proposal.

14 Q. Other than that template, then,  
15 for -- well, I don't know if template's the right  
16 word. Model, right?

17 A. Yes.

18 Q. Is gross profit or gross margin  
19 reported regularly on any financial statements?

20 A. It is by finance, in some reports  
21 that they create.

22 Q. Okay. That you get on occasion?